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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

YVONNE DALTON, et al.,  
Plaintiffs,  
v.  
LEE PUBLICATIONS, INC., et al.,  
Defendants.

Case No. 08cv1072 BTM (NLS)

## ORDER GRANTING EX PARTE APPLICATION and STAYING MOTION FOR SUMMARY JUDGMENT

Plaintiffs have filed an ex parte motion to stay Defendant Lee Publications, Inc.'s pending motion for partial summary judgment [Doc. 69]. Plaintiffs argue that the motion is premature and a violation of the magistrate judge's scheduling order.

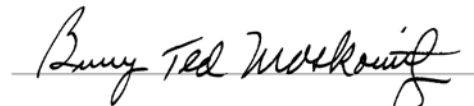
The scheduling order does not mention and does not explicitly preclude Defendant's motion for summary judgment. Still, Plaintiffs' counsel makes an adequate showing that they have not had the opportunity to develop the record on the issues it presents. See Fed. R. Civ. P. 56(f)(1) (court may deny motion for summary judgment if "party opposing motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition"); Greer Decl. ¶¶ 7–12 (stating reasons why record not fully developed). To date, the parties have only conducted discovery related to class certification. And although this discovery may also relate to merits issues, the parties have not done any discovery on several of the issues raised by Defendant's motion.

1 The Court therefore **GRANTS** Plaintiffs' ex parte motion to stay [Doc. 69].  
2 Defendant's motion for summary judgment shall be continued to **August 13, 2010 at 11:00**  
3 **a.m.** No personal appearances are necessary unless ordered by the Court.

4 Plaintiffs shall take all discovery necessary to respond to the motion for summary  
5 judgment. Plaintiffs shall have priority in discovery at this stage and Defendant shall be  
6 stayed from any discovery to avoid interference with Plaintiffs' efforts. Any unreasonable  
7 delay in discovery by Defendant will be grounds for denial of the motion for summary  
8 judgment. Any issues of delay shall be forthwith brought to the attention of this Court (not  
9 the Magistrate Judge) by filing a request for a status conference. The Court will not entertain  
10 any subsequent motions for summary judgment on the grounds raised in the present motion.  
11 Plaintiffs' opposition brief and Defendant's reply shall be filed in accordance with the local  
12 rules and the new August 13, 2010 hearing date.

13 **IT IS SO ORDERED.**

14 DATED: May 14, 2010

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16  
17 Honorable Barry Ted Moskowitz  
United States District Judge